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9 Attorneys for Defendants,
10 **COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY**
11 (*Defendants is exempt from filing fees pursuant to Government Code § 6103*)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

1 JOSHUA ASSIFF,

2 Plaintiffs,

3 v.

4 COUNTY OF LOS ANGELES;
5 SHERIFF DEPUTY BADGE
6 NUMBER 404532; And DOES 1
7 through 10,

8 Defendants.

9 Case No.: 2:22-cv-05367 RGK(MAAx)

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**DEFENDANTS' MOTION IN
LIMINE NO. 5 TO PRECLUDE
ANY EVIDENCE EXCLUDE
EVIDENCE OF THIRD-PARTY
OPINIONS REGARDING
LIABILITY IN THIS MATTER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

(*Declaration Of Molshree Gupta, Esq. Filed
Concurrently*)

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to:
Hon. R. Gary Klausner, District Judge
Courtroom 850
All Discovery Matters Referred to:
Hon. Maria A. Audero, District Judge

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT defendants COUNTY OF LOS ANGELES and
3 SERGEANT TRAVIS KELLY (collectively “Defendants”) hereby move this Court for
4 an order in *limine* to exclude from trial any comments, findings and/or opinions from
5 third-parties associated with the Los Angeles Sheriff’s Department’s (“LASD”) review
6 regarding the subject incident as evidence of liability.

7 Defendants bring this Motion on the grounds that such evidence is irrelevant to
8 the issues to be tried; it amounts to hearsay; it amounts to subsequent remedial measures;
9 and such evidence would only serve to unduly prejudice defendants, waste time, confuse
10 the issues, and mislead the jury.

11 Defendants further move this Court to instruct plaintiffs and their counsel and to
12 require them to advise all witnesses:

13 1. Not to attempt to convey to the jury, directly or indirectly, any of the facts
14 mentioned in this Motion without first obtaining permission of the Court outside the
15 presence and hearing of the jury;

16 2. Not to make any reference to the fact that this Motion has been filed; and

17 3. To warn and caution each of plaintiffs’ witnesses to strictly follow the same
18 instructions.

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1 This motion is made following compliance with the meet and confer requirements
2 of Local Rule 7-3. This Motion is based upon the Memorandum of Points and
3 Authorities and Declaration of Molshree Gupta, served herewith, upon the pleadings and
4 papers on file herein, and upon such other and further oral argument and evidence as
5 may be presented at the hearing on this Motion.

6
7 Dated: June 9, 2023

KJAR, MCKENNA & STOCKALPER, LLP

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9 By: Molshree Gupta

10 PATRICK E. STOCKALPER
11 MOLSHREE GUPTA
12 Attorneys for Defendants,
13 COUNTY OF LOS ANGELES and SERGEANT
14 TRAVIS KELLY

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MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION & ARGUMENT**

3 This is a 42 U.S.C. §1983 alleged excessive force case arising out of a traffic stop
4 and subsequent arrest of Plaintiff JOSHUA ASSIFF (“Plaintiff”) by Defendant
5 SERGEANT TRAVIS KELLY (“Defendant Kelly”) on September 24, 2021, in the
6 Santa Clarita Valley. Plaintiff alleges that Defendant Kelly pulled him over for no
7 apparent reason; tasered, choked, pepper sprayed and beat him; and arrested him without
8 probable cause, all in violation of his constitutional rights.

9 Defendants anticipate Plaintiff will attempt to introduce comments, findings
10 and/or opinions of third-parties associated with the Los Angeles Sheriff’s Department’s
11 (“LASD”) review regarding the subject incident as evidence of liability. For the reasons
12 set forth below, Defendants respectfully request the Court preclude such evidence at
13 trial.

14 **II. LEGAL AUTHORITY FOR MOTIONS IN LIMINE**

15 A motion in *limine* “is any motion, whether made before or during trial, to exclude
16 anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United*
17 *States* (1984) 469 U.S. 38, 40. Motions in *limine* are well recognized in practice and by
18 case law. See *Ohler v. United States* (2000) 529 U.S. 753, 758; *United States v. Cook*
19 (9th Cir. 1979) 608 F.2d 1175, 1186.

20 The purpose is to avoid the futile attempt of “unring[ing] the bell” when jurors
21 have seen or heard inadmissible evidence, even when stricken from the record. See
22 *Brodit v. Cambra* (9th Cir.2003) 350 F.3d 985, 1004-05 (citing *Kelly v. New West Fed.*
23 *Sav.* (1996) 49 Cal. App. 4th 659, 669). Motions in *limine* also serve to streamline trials,
24 by settling evidentiary disputes in advance. See *U.S. v. Tokash* (7th Cir. 2002) 282 F.3d
25 962, 968.

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1 **III. THE SUBJECT EVIDENCE IS WHOLLY IRRELEVANT TO THE CLAIMS**
2 **IN THIS CASE**

3 Evidence is relevant if it has any tendency to make a fact more or less probable
4 than it would be without the evidence, and the fact is of consequence in determining the
5 action. Fed. R. Evid. 401. Relevant evidence is admissible unless barred by the U.S.
6 Constitution, a federal statute, the Federal Rules of Evidence, or other U.S. Supreme
7 Court rules. Fed. R. Evid. 402. Irrelevant evidence is not admissible. Fed. R. Evid. 402.

8 Here, comments, findings and/or opinions of members of the LASD regarding the
9 incident have no tendency to make a fact that is of consequence in determining the action
10 more or less probable than it would be without the evidence, and are therefore wholly
11 irrelevant to this lawsuit. For that reason alone, the Court should preclude such evidence.

12 **IV. THE SUBJECT EVIDENCE IS INADMISSIBLE HEARSAY**

13 “Hearsay” means a statement that the declarant does not make while testifying at
14 the current trial or hearing, and a party offers in evidence to prove the truth of the matter
15 asserted in the statement. Fed. R. Evid. 801(c)(1)-(2). Unless provided otherwise by a
16 federal statute, the Federal Rules of Evidence, or other rules prescribed by the Supreme
17 Court, hearsay is not admissible. Fed. R. Evid. 802.

18 Here, comments, findings and/or opinions of third-parties associated with the
19 LASD’s review of the subject incident are statements made by a declarant while not
20 testifying at the trial in this matter. Thus, to the extent Plaintiff would offer such
21 documents and their contents for the truth of the matter asserted, it would be
22 inadmissible as hearsay. For this reason as well, the Court should preclude the
23 comments, findings and/or opinions of reviewing members of the LASD regarding the
24 incident from trial.

25 **V. THE SUBJECT EVIDENCE SHOULD BE BARRED AS INADMISSIBLE**
26 **CHARACTER EVIDENCE**

27 Evidence of a person’s character or character trait is not admissible to prove that
28 on a particular occasion the person acted in accordance with the character or trait. Fed.

1 R. Evid. 404. The Ninth Circuit has long held that evidence of prior acts of a Defendant
2 police officer in a civil rights action is inadmissible. *Gates v. Rivera* (9th. Cir. 1993) 993
3 F.2d, 697, 700. In *Gates*, the defendant police officer, Rivera, was allowed to testify that
4 in his 16-1/2 years as a police officer, he had not shot anyone and that he had never
5 before discharged his weapon. *Id.* at 700. The Appellate Court noted that such evidence
6 was not admissible in a civil rights action under Federal Rules of Evidence 404, and held
7 that such evidence was irrelevant since intent was not an issue in an excessive force case.
8 *Ibid.* Rather, the question to be resolved is whether objectively, the officer's use of force
9 was reasonable. *Ibid.*

10 "In any event, issues of motive and intent are especially irrelevant in [excessive
11 force cases]. A test "in an excessive force case is an objective one." [Citation omitted].
12 Thus, "an officer's evil intentions will make a 4th Amendment violation out of an
13 objectively reasonable use of force; nor will an officer's good intentions make an
14 objectively unreasonable use of force constitutional." *Morgan v. City Marmaduke, Ark.*
15 (8th Cir. 1992) 958 F.2d 207, 212, citing *Graham v. Connor* (1989) 490 U.S. 386, 397,
16 109 Sup. Ct. 1865, 104 L.E.2d 443.

17 Here, the reason Plaintiff would attempt to introduce evidence of comments,
18 findings and/or opinions of third-parties associated with the LASD's review of the
19 subject incident would be to show the bad character of Defendant Kelly and the LASD
20 (i.e. Defendant County) in general. That kind of evidence is explicitly barred by Rule
21 404, as it would amount to inadmissible character evidence. Accordingly, the Court
22 should preclude this evidence.

23 **VI. THE SUBJECT EVIDENCE SHOULD BE EXCLUDED PURSUANT TO FRE**
24 **403**

25 The court may exclude relevant evidence if its probative value is substantially
26 outweighed by a danger of one or more of the following: unfair prejudice, confusing the
27 issues, misleading the jury, undue delay, wasting time, or needlessly presenting
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1 cumulative evidence. Fed. R. Evid. 403. Rule 403 requires the prejudice be "unfair."
2 *U.S. v. Young* (D.S.D. 1990) 754 F. Supp. 739, 742. "Unfair" in this context means the
3 evidence has an undue tendency to suggest a jury decision based upon an improper basis,
4 usually an emotional one. *Id.* at 742. Additionally, where evidence is not closely related
5 to the issue being charged and is otherwise irrelevant, the probative value of such
6 evidence is substantially outweighed by the danger of unfair prejudice. *U.S. v. Guerrero*
7 (9th Cir. 1984) 756 F.2d 1342, 1348; *U.S. v. Black* (9th Cir. 1994) 20 F.3d 1458, 1464.

8 In *Maddox v. City of Los Angeles* (9th Cir. 1986) 792 F.2d 1408, the Ninth Circuit
9 upheld the trial court's ruling in denying the admissibility of an internal affairs
10 investigation on grounds the police officers would be unduly prejudiced by introduction
11 of subsequent disciplinary proceedings: "The jury might have inferred that Officer Harris
12 was guilty of wrongdoing merely because the police department conducted disciplinary
13 proceedings. The jury might have given unfair or undue weight to this evidence or they
14 might have been confused as to the relevance of the evidence . . ." *Id.* at 1417.

15 Even if comments, findings and/or opinions of third-parties associated with the
16 LASD's review of the subject incident had any probative value, which they do not, it
17 would be substantially outweighed by a danger of unfair prejudice to Defendants. If the
18 jury hears evidence of any comments or findings by LASD relating to how the conduct
19 of Defendant Kelly or any other involved deputy could have been better, it will likely
20 punish Defendants, regardless of the liability in this case.

21 Moreover, because the subject evidence has no probative value, introduction of
22 such evidence will inherently waste time. Moreover, by introducing evidence of
23 comments or findings by LASD relating to how the conduct of Defendant Kelly or any
24 other involved deputy could have been better, the jury may wrongly conclude that the
25 conduct of Defendant Kelly or any other involved deputy was unconstitutional or fell
26 below the LASD's standard. In short, any probative value of such evidence is
27 substantially outweighed by the probability that its admission will create substantial
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1 danger of unfair prejudice, of confusing the issues, and of misleading the jury, and waste
2 time.

3 For this reason as well, the Court should preclude the subject evidence from trial.

4 **VII. MEET AND CONFER**

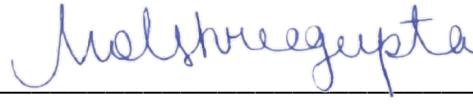
5 On June 8, 2023, and on June 9, 2023, counsel for Defendants wrote to counsel for
6 Plaintiff to request to met and conferred on the substance of this Motion in *Limine*.
7 Gupta Decl. ¶ 4. No agreement could be reached. Gupta Decl. ¶ 4.

8 **VIII. CONCLUSION**

9 Based on the foregoing, defendants respectfully request the Court grant this
10 Motion in *Limine*, and preclude plaintiffs and their counsel from introducing at trial any
11 evidence, references to evidence, witness testimony, contentions, or cross examination
12 relating to other claims, lawsuits, settlements, verdicts, judgments, complaints,
13 discipline, administrative investigations or proceedings, or other alleged incidents
14 concerning Defendant Kelly or any other member of LASD.

15
16 Dated: June 9, 2023

KJAR, MCKENNA & STOCKALPER, LLP

17
18 By: 
19 PATRICK E. STOCKALPER
20 MOLSHREE GUPTA
21 Attorneys for Defendants,
22 COUNTY OF LOS ANGELES and SERGEANT
23 TRAVIS KELLY
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On June 9, 2023, I served the foregoing document described as **DEFENDANTS' MOTION IN LIMINE NO. 5 TO PRECLUDE ANY EVIDENCE EXCLUDE EVIDENCE OF THIRD-PARTY OPINIONS REGARDING LIABILITY IN THIS MATTER; MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

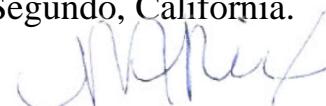
By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 9, 2023, at El Segundo, California.


Maria Nixon

1 **SERVICE LIST**

2 **Assiff, Joshua vs. County of Los Angeles, et al.**

3 Central District- Case No.: 2:22-cv-05367 RGK(MAAx)

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